

STATE OF MICHIGAN
COURT OF APPEALS

MINGA PERKINS,

Plaintiff-Appellant,

v

HENRY FORD COMMUNITY COLLEGE,

Defendant-Appellee.

UNPUBLISHED

November 13, 2014

No. 317643

Wayne Circuit Court

LC No. 12-005905-NO

Before: WHITBECK, P.J., and FITZGERALD and MURRAY, JJ.

WHITBECK, P.J. (*concurring in part and dissenting in part*).

Plaintiff, Minga Perkins, appeals as of right the trial court's order granting summary disposition in favor of defendant, Henry Ford Community College (the College), under MCR 2.116(C)(7). I agree with the majority's conclusion regarding causation. However, because Perkins did not establish that the stairs were in a dangerous condition, I would conclude that the trial court properly granted summary disposition. Accordingly, I would affirm.

I. FACTS

Perkins was a student at the College. On December 10, 2010, she was walking down a stairwell inside the south entrance of the science building when she slipped and fell. On March 21, 2011, Perkins sent the College a notice of intent that she wished to pursue a claim based on her injuries. In her notice, Perkins stated that she "lost her footing as the result of a chipped and broken stair and fell." In her complaint, Perkins alleged that the College negligently maintained the stairs, causing her to fall.

At her deposition, Perkins testified that a chip in the stairs caused her to fall. The majority ably examines this testimony, and I will not repeat it here.

Sam Greco, the College's building engineer, testified at his deposition that he did not consider the condition of the steps to be defective. T. Allen Gigliotti, the College's director of building and grounds, testified that the chips in the step were not hazardous because they were on the edge of the step, but a person is more likely to place his or her feet on the tread in the middle of the steps. Gigliotti testified that he never received any complaints about the condition of the steps.

On February 25, 2012, the College moved for summary disposition under MCR 2.116(C)(7). The College asserted in part that Perkins could not establish that the condition of the stairs caused her to fall and did not establish that a dangerous condition of the building caused her injury. Perkins responded that she established causation because she felt her foot go into a grove before she fell. The trial court granted the College's motion for summary disposition on the basis that Perkins could not show that a defect in the public building caused her injury.

II. GOVERNMENTAL IMMUNITY

A. STANDARD OF REVIEW

This Court reviews de novo the trial court's decision on a motion for summary disposition.¹ A defendant is entitled to summary disposition under MCR 2.116(C)(7) if the plaintiff's claims are barred because of immunity granted by law.² The moving party may support its motion with affidavits, depositions, admissions, or other documentary evidence that would be admissible at trial.³ We must consider this evidence and determine whether it indicates that the defendants are entitled to immunity.⁴ We consider the contents of the plaintiff's complaint to be true, unless contradicted by the documentary evidence.⁵ If reasonable minds could not differ on the legal effects of the facts, it is a question of law whether governmental immunity bars a plaintiff's claim.⁶

B. LEGAL STANDARDS

The governmental immunity act provides "broad immunity from tort liability to governmental agencies whenever they are engaged in the exercise or discharge of a governmental function[.]"⁷ This Court broadly construes the scope of governmental immunity and narrowly construes its exceptions.⁸

One exception to governmental immunity is the public building exception, under which governmental agencies have "the obligation to repair and maintain public buildings under their

¹ *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008).

² *Id.*

³ *Id.*; MCR 2.116(G)(5), (6).

⁴ *Snead v John Carlo, Inc*, 294 Mich App 343, 354; 813 NW2d 294 (2011).

⁵ *Odom*, 482 Mich at 466.

⁶ *Snead*, 294 Mich App at 354.

⁷ MCL 691.1401 *et seq.*; *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 595; 363 NW2d 641 (1984).

⁸ *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001).

control when open for use by members of the public.”⁹ The public building exception to governmental immunity applies if the plaintiff shows five elements:

(1) a governmental agency is involved, (2) the public building in question was open for use by members of the public, (3) a dangerous or defective condition of the public building itself exists, (4) the governmental agency had actual or constructive knowledge of the alleged defect, and (5) the governmental agency failed to remedy the alleged defective condition after a reasonable period or failed to take action reasonably necessary to protect the public against the condition after a reasonable period.^[10]

Even when a plaintiff’s claim falls within a statutory exception to governmental immunity, the plaintiff must establish the elements of the underlying negligence claim.¹¹ To prove negligence, a plaintiff must show that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the plaintiff was injured, and (4) the defendant’s breach caused the plaintiff’s injury.¹²

C. APPLYING THE STANDARDS

Perkins contends that the trial court erred when it granted the College’s motion for summary disposition because she established that a defect in the stairs caused her to fall. I disagree. Perkins’s positions are essentially circular: she contends that the stairs were defective because she fell, and she contends that she fell because the stairs were defective. I conclude that Perkins has not established that the stairs were defective or dangerous. It is undisputed that the College’s steps were chipped, and it is undisputed that Perkins fell. But simply because Perkins slipped on the stairs does not mean that the College negligently maintained the stairs and that they were in a dangerous condition, even presuming that the jury could infer that Perkins slipped on a chip in the stairs.

The majority states, however, that “[b]ecause plaintiff submitted evidence that the steps were in some level of disrepair, she has created a jury submissable issue.” I reiterate that Perkins merely testified that the stairs were chipped and that she fell on them. She did not testify, nor do the photographs substantiate, that the stairs were dangerous or defective. Simply

⁹ MCL 691.1406.

¹⁰ *Kerbersky v Northern Mich Univ*, 458 Mich 525, 529; 582 NW2d 828 (1998) (emphasis omitted); *Fane*, 465 Mich at 75.

¹¹ *Id.* at 530 n 5; *Canon v Thumudo*, 430 Mich 326, 335; 422 NW2d 688 (1988).

¹² *Henry v Dow Chemical Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005).

put, “disrepair”—even assuming that chips in stairs indicate some level of disrepair—is not equivalent to “dangerous or defective.”¹³

Again, to recover under MCL 691.1046, the plaintiff must show that a dangerous or defective condition of the public building itself exists. Here, the only testimony available regarding whether the building was defective are the testimonies of Gigliotti and Greco that the steps were not defective and that the chips in the stairs did not reduce their functionality. It is a logical leap, and one that I would not take, to presume that the chipped noses of the stairs rendered them dangerous or defective simply because Perkins fell on them.

I would affirm.

/s/ William C. Whitbeck

¹³ See *Ghrist v Chrysler Corp*, 451 Mich 242, 254; 547 NW2d 272 (1996) (something is defective if it is not reasonably safe for foreseeable uses); *Jackson v City of Lansing*, 121 Mich 279; 80 NW 8 (1899) (describing the difference between perfectly safe and reasonably safe in terms of public walkways).